

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Liliana Manuel	Team: Squad #7	CCRB Case #: 201508632	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 10/01/2015 8:00 PM	Location of Incident: Greene Street	Precinct: 01	18 Mo. SOL 4/1/2017	EO SOL 4/1/2017	
Date/Time CV Reported Fri, 10/02/2015 12:53 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/09/2015 11:14 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Frederic Ortiz	03659	935440	PBMS SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robinson Martinez	27247	947224	PBMS SU
2. SGT Edward Ryan	03745	907232	066 PCT
3. POM Nicholas Atsaves	17868	952430	066 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Frederic Ortiz	Force: Sgt Frederic Ortiz used a chokehold against § 87(2)(b)	
B.SGT Frederic Ortiz	Force: Sgt Frederic Ortiz restricted § 87(2)(b) breathing.	
C.SGT Frederic Ortiz	Force: Sgt Frederic Ortiz used physical force against § 87(2)(b)	

Case Summary

On October 2, 2015, Sgt Frederic Ortiz of Patrol Boro Manhattan South Anti-Crime filed the following IAB complaint on behalf of § 87(2)(b) who sustained an abrasion while in police custody (Board Review 1). The complaint generated original log number 15-29515, and was received at the CCRB on October 9, 2015.

On October 1, 2015, at approximately 8:00 p.m., Sgt Ortiz and PO Robinson Martinez of Patrol Boro Manhattan South Anti-Crime, along with PO Nicholas Atsaves and Sgt Edward Ryan of the 66th Precinct, stopped a parked car in which § 87(2)(b) and § 87(2)(b) were occupants on Greene Street in Manhattan. Sgt Ortiz and PO Martinez had previously observed § 87(2)(b) using numerous credit cards and identification cards in an Apple store on the corner of Prince Street and Greene Street. Sgt Ortiz allegedly pulled § 87(2)(b) out of the vehicle, put him in a chokehold, restricting his breathing, threw him onto the ground, and kneeled on top of him to handcuff him (**Allegations A, B, and C**). § 87(2)(b) sustained an abrasion to his nose but did not request or receive medical treatment in regards (Board Review 2; 3). § 87(2)(b) and § 87(2)(b) were arrested for § 87(2)(b) § 87(2)(b), and § 87(2)(b) accrued additional charges of § 87(2)(b) § 87(2)(b) (Board Review 4; 5). § 87(2)(b) girlfriend, § 87(2)(b) was arrested as well inside of the Apple store (Board Review 6). Surveillance footage was obtained from the Apple store and from a Ralph Lauren store, located across the street from the Apple store (Board Review 7). The footage did not capture any portion of the incident.

This case went beyond the 90-day benchmark by approximately three weeks as Sgt Ryan was out sick on his original interview date, and video footage from the Apple store was not received until January 11, 2016.

Mediation, Civil and Criminal Histories

- Mediation was presented to § 87(2)(b) during his interview on October 27, 2015. He rejected mediation.
- As of October 30, 2015, § 87(2)(b) had not filed a Notice of Claim with regard to this incident (Board Review 8).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB case involving § 87(2)(b) (Board Review 9).
- Sgt Ortiz has been a member of the NYPD for 11 years. He has had nine previous CCRB cases involving seventeen allegations, none of which were substantiated. Two of these past allegations were allegations of force, and were closed as “Complainant Uncooperative” and “Victim Uncooperative.”

Potential Issues

On October 29, 2015, § 87(2)(b) stated that he wished to speak with his attorney to determine whether he should provide a sworn statement to the CCRB (Board Review 14). On November 10, 2015, contact was established with his attorney, § 87(2)(b), who was not yet sure whether § 87(2)(b) should provide a sworn statement to the CCRB (Board Review 10). Follow-up contact attempts were made to § 87(2)(b) and § 87(2)(b). Neither § 87(2)(b) nor § 87(2)(b) responded to the contact attempts, and § 87(2)(b) therefore did not provide a sworn statement. On October 28, 2015, contact was established with § 87(2)(b) who confirmed that she did not witness any of the alleged misconduct. She therefore did not provide a sworn statement (Board Review 13).

Findings and Recommendations

Allegation A – Sgt Frederic Ortiz used a chokehold against § 87(2)(b)

Allegation B – Sgt Frederic Ortiz restricted § 87(2)(b) breathing.

Allegation C – Sgt Frederic Ortiz used physical force against § 87(2)(b)

§ 87(2)(b) provided a phone statement to the CCRB on October 21, 2015, and a sworn statement on October 27, 2015 (Board Review 12). § 87(2)(b) stated after Sgt Ortiz repeatedly asked him to step out of the car, § 87(2)(b) stated “No,” and locked his car door. Sgt Ortiz reached into the car window, opened the door, and pulled § 87(2)(b) out of the car. He tried to handcuff § 87(2)(b) but § 87(2)(b) refused to be handcuffed by holding his arms to his sides. § 87(2)(b) alleged that Sgt Ortiz then put his arm around § 87(2)(b) neck, pressing his forearm and the inside of his elbow against § 87(2)(b) throat for approximately 7 to 10 seconds, restricting § 87(2)(b) breathing. Sgt Ortiz then allegedly swung § 87(2)(b) onto the ground by pulling his shirt. § 87(2)(b) landed face down, causing an abrasion to the bridge of his nose. Using his full body weight, Sgt Ortiz put his knee and forearm on § 87(2)(b) back, again restricting § 87(2)(b) breathing, and handcuffed § 87(2)(b). Though § 87(2)(b) acknowledged officers having told him to stop resisting, § 87(2)(b) denied resisting or moving his body in any way while on the ground.

In an unsworn statement to the CCRB, § 87(2)(b) stated that PO Martinez told Sgt Ortiz that § 87(2)(b) was reaching for something in the car, and that Sgt Ortiz then opened the car door and pulled § 87(2)(b) out. After being handcuffed, § 87(2)(b) turned around and saw Sgt Ortiz and PO Martinez wrestling § 87(2)(b) on the ground, trying to grab his hands. He stated that the officers were on top of § 87(2)(b) at some points, and that Sgt Ortiz put § 87(2)(b) in a “headlock”, with his arm around § 87(2)(b) neck, while PO Martinez tried to grab his arms. § 87(2)(b) heard § 87(2)(b) gasping for air, trying to state that he could not breathe. § 87(2)(b) was moving his body while on the ground, which § 87(2)(b) believed was an attempt to get some air. The officers told § 87(2)(b) to stop resisting, and struggled with him for approximately five minutes before handcuffing him. § 87(2)(b) could not provide more details of the struggle.

PO Atsaves and PO Martinez stated that after refusing Sgt Ortiz’s numerous requests for him to roll down his window, § 87(2)(b) reached under his seat. Sgt Ortiz, PO Atsaves, and PO Martinez could not see what § 87(2)(b) was reaching for but feared it may have been a weapon. Sgt Ortiz then pulled § 87(2)(b) out of the car by his arm. Sgt Ortiz, PO Atsaves, and PO Martinez claimed that § 87(2)(b) then fled from the officers. During his interview, Sgt Ortiz stated that approximately three officers blocked § 87(2)(b) path, preventing him from running further, and that he and the three officers then attempted to grab ahold of § 87(2)(b) hands, which § 87(2)(b) refused to give them. In his statement to IAB, Sgt Ortiz stated that PO Martinez had stopped § 87(2)(b) from running further by jumping on his back, and that it then took the assistance of Sgt Ryan, Sgt Ortiz, and PO Atsaves to “forcefully” bring § 87(2)(b) to the ground. Sgt Ortiz could not recall the exact way in which § 87(2)(b) was brought to the ground. PO

Atsaves and PO Martinez claimed that PO Martinez stopped § 87(2)(b) by grabbing his torso. PO Atsaves recounted that he, PO Martinez, and Sgt Ortiz then attempted to apprehend § 87(2)(b) who refused to give up his hands, and § 87(2)(b) and the three officers then fell to the ground. PO Martinez explained that the momentum from him running and grabbing § 87(2)(b) torso caused them to fall to the ground. He recalled that he landed on top of § 87(2)(b) but soon got off of him.

PO Martinez, PO Atsaves, and Sgt Ortiz stated that once on the ground, § 87(2)(b) vigorously moved his body and still refused to give up his hands. Sgt Ortiz acknowledged that he may have ended up on top of § 87(2)(b) at some point while they were rolling around on the ground. He acknowledged in his IAB statement that § 87(2)(b) repeatedly yelled that he could not breathe while on the ground. PO Martinez recalled this as well, but stated that § 87(2)(b) was yelling various statements at the top of his lungs the entire time he was on the ground, and that in no way was his breathing restricted. All officers denied using a chokehold on § 87(2)(b) or intentionally restricting his breathing in any way. They did not see any other officers do so. Sgt Ortiz did not recall putting his knee or forearm on § 87(2)(b) back, and no officers saw him do so. PO Martinez, PO Atsaves, and Sgt Ortiz were consistent in that the only force they used against § 87(2)(b) was pulling his arms in an attempt to handcuff him, and perhaps bringing him to the ground. Both PO Martinez and Sgt Ortiz stated from the point in which § 87(2)(b) exited the vehicle to when he was finally apprehended, he attempted to hold his arms in front of his body and put his hands into his pants, as if to conceal something. Sgt Ortiz, PO Martinez, and PO Atsaves agreed that officers repeatedly told § 87(2)(b) to stop resisting.

Sgt Ryan remained on the passenger side of the vehicle with § 87(2)(b) throughout the incident, and his view of the altercation was therefore largely obstructed. He did not see officers make contact with any part of § 87(2)(b) body other than his hands and did not witness any of the alleged force. He did not know how § 87(2)(b) ended up on the ground, and was unable to clearly see the struggle on the ground. Neither he nor PO Atsaves heard § 87(2)(b) express that his breathing was restricted. The 66th Precinct officers had never met the Patrol Boro officers prior to this incident, could not recall their names during their interviews, and do not currently work in the same command as Sgt Ortiz or PO Martinez.

Patrol Guide Procedure 203-11 authorizes officers to use the minimum amount of force necessary to enforce compliance with a lawful order and overcome resistance to affect an arrest (Board Review 11).

§ 87(2)(g)

It is undisputed that § 87(2)(b) refused numerous verbal commands and refused to be handcuffed. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad: ____

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date